

FILED
2021 SEP 8 PM 3:31CLERK
U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

USA,

Appellant,

v.

DAVID L. MILLER,

Appellee.

**MEMORANDUM DECISION AND
ORDER ON APPEAL FROM UNITED
STATES BANKRUPTCY COURT**

Case No. 2:20-CV-00248-BSJ.

District Judge Bruce S. Jenkins

Before the Court is Appellant United States' appeal of the bankruptcy court's memorandum decision and order. The Court heard oral argument on August 28, 2020.¹ Mr. Landon M. Yost appeared on behalf of United States. Mr. Reid W. Lambert appeared on behalf of Appellee David L. Miller. The Court reserved on the matter. Having considered the parties' briefs, the arguments of counsel, and the relevant law, the Court hereby AFFIRMS and ADOPTS the bankruptcy court's memorandum decision and order.

This case concerns the interplay between two provisions of the bankruptcy code – § 106, which abrogates sovereign immunity with respect to certain code sections, and § 544(b), which allows a Trustee in a chapter 7 bankruptcy to step into a creditor's shoes and avoid transfers under applicable law. Applicable law includes state law outside of bankruptcy. The question before the Court is whether Congress abrogated sovereign immunity as to the underlying state law, in this case, the Utah Uniform Fraudulent Transfer Act. Specifically, the Court must

¹ Min. Entry, ECF No. 13.

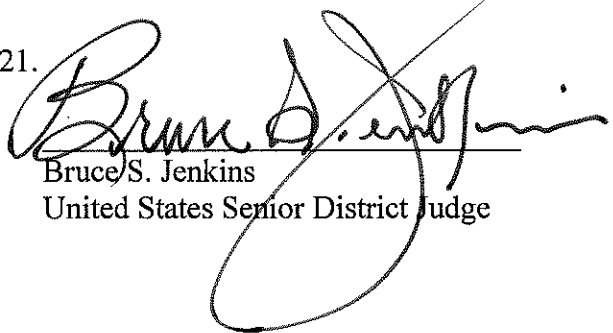
determine whether the bankruptcy court erred when it determined “§ 106(a)(1)’s waiver reached the underlying state law causes of action incorporated through § 544(b).”

In the Bankruptcy process, the Trustee has a duty to recover and assemble assets so that entitled creditors may share therein. In that constitutionally footed process,² the United States is as vulnerable to disgorge inappropriate payment received as any other creditor so that all entitled creditors may share appropriately as Congress has directed.

For the reasons set forth in the bankruptcy court’s memorandum decision and order, the ruling of the bankruptcy court is AFFIRMED and ADOPTED by this Court.

IT IS SO ORDERED.

DATED this th8 day of September, 2021.



Bruce S. Jenkins
United States Senior District Judge

² U.S. CONST. art. I, § 8, cl. 4. “The Congress shall have Power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.”